

Securities and Exchange Commission

§ 228.304T

areas of concern and indicating that a more detailed letter will be forthcoming within the ten business day period noted above. The interim letter, if any, shall be filed with the report or registration statement or by amendment within two business days of receipt.

(b) If the conditions in paragraphs (b)(1) through (b)(3) of this Item exist, the small business issuer shall describe the nature of the disagreement or event and the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required (unless that method ceases to be generally accepted because of authoritative standards or interpretations issued after the disagreement or event):

(1) In connection with a change in accountants subject to paragraph (a) of this Item, there was any disagreement or event as described in paragraph (a)(1)(iv) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the later fiscal year, there have been any transactions or events similar to those involved in such disagreement or event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required.

Instructions to Item 304: 1. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported as that term is defined in Rule 12b-2 under the Exchange Act (§240.12b-2); the disclosure called for by paragraph (a) of this Item must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A (§249.14a-101 *et seq.*). The disclosure called for by paragraph (b) of this Item must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this Item in an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 (§240.14a-3 or 240.14c-3 of this chapter), or in a proxy or information statement filed pursuant to the requirements of Schedule 14A (§240.14a-101 *et seq.*) or 14C (§240.14c-101 *et seq.*), in lieu of a letter pursuant to paragraph (a)(2)(ii)(D) or (a)(3) of this Item, before filing such materials with or furnishing

such materials to the Commission, the small business issuer shall furnish the disclosure required by paragraph (a) of this Item to each accountant who was engaged during the period set forth in paragraph (a) of this Item. If any such accountant believes that the statements made in response to paragraph (a) of this Item are incorrect or incomplete, it may present its views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the small business issuer within ten business days of the date the accountant receives the small business issuer's disclosure. Further, unless the written views of the newly engaged accountant required to be filed as an exhibit by paragraph (a)(2)(ii)(D) of this Item have been previously filed with the Commission, the small business issuer shall file a Form 8-K (17 CFR 249.308 of this chapter) along with the annual report or proxy or information statement for the purpose of filing the written views as exhibits.

3. The information required by this Item need not be provided for a company being acquired by the small business issuer if such acquiree has not been subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 (§240.14a-3 or 240.14c-3 of this chapter) for its latest fiscal year.

4. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or their designee) will generally suffice as the accountant advising the small business issuer of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

§ 228.304T (Item 304T) Item 304T of Regulation S-B.

NOTE: This is a special temporary section that applies to issuers for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged to examine a significant subsidiary's financial statements and on which the principal public accountant expressed reliance in its report, on or after March 14, 2002.

(a) *General rule.* Those issuers for which this Item 304T applies must comply with the requirements of §228.304,

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except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 228.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 228.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 228.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

[67 FR 13535, Mar. 22, 2002]

EFFECTIVE DATE NOTE: At 67 FR 13535, Mar. 22, 2002, § 228.304T was added effective Mar. 18, 2002 through Dec. 31, 2002.

§ 228.305 [Reserved]

§ 228.306 (Item 306) Audit committee report.

(a) The audit committee must state whether:

(1) The audit committee has reviewed and discussed the audited financial statements with management;

(2) The audit committee has discussed with the independent auditors the matters required to be discussed by SAS 61, as may be modified or supplemented;

(3) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as may be modified or supplemented, and has discussed with the independent accountant the independent accountant's independence; and

(4) Based on the review and discussions referred to in paragraphs (a)(1)

through (a)(3) of this Item, the audit committee recommended to the Board of Directors that the audited financial statements be included in the company's Annual Report on Form 10-KSB (17 CFR 249.310b) for the last fiscal year for filing with the Commission.

(b) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by this Item.

(c) The information required by paragraphs (a) and (b) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 *et seq.* or 240.14c-1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

(d) The information required by paragraphs (a) and (b) of this Item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

[64 FR 73401, Dec. 30, 1999]

§ 228.310 (Item 310) Financial Statements.

NOTES: 1. Financial statements of a small business issuer, its predecessors or any businesses to which the small business issuer is a successor shall be prepared in accordance with generally accepted accounting principles in the United States.

2. Regulation S-X (17 CFR 210.1 through 210.12) Form and Content of and Requirements for Financial Statements shall not apply to the preparation of such financial statements, except that the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of